

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

MAGARITO FLORES,	:	
		3:06CV0013
Petitioner,	:	3:97CR0074
vs.	:	District Judge Walter Herbert Rice
		Magistrate Judge Sharon L. Ovington
UNITED STATES OF	:	
AMERICA,	:	
	:	
Respondent.	:	
	:	

REPORT AND RECOMMENDATION¹

This case is before the Court upon Petitioner's Motion to Proceed *In Forma Pauperis* (Doc. #251). Research reveals that the United States Court of Appeals for the Sixth Circuit has directed Petitioner to either pay the required filing fee to initiate his appeal or file a Motion to Proceed *In forma Pauperis* in this Court. *See Flores v. United States*, App. No. 06-4521. Hence his present Motion.

As set forth in the prior Report and Recommendations (Doc. #234), because reasonable jurists would not disagree over the conclusion that Petitioner's Motion to Vacate Sentence under 28 U.S.C. §2255 is barred by the statute of limitations, Petitioner's appeal would not be taken in good faith, and he consequently should be denied leave to appeal *in forma pauperis*. *See* 28 U.S.C. §1915(a)(3).

¹ Attached hereto is a NOTICE to the parties regarding objections to this Report and Recommendations.

IT IS THEREFORE RECOMMENDED THAT:

Petitioner's Motion to Proceed *In Forma Pauperis* (Doc. #251) be DENIED.

January 30, 2007

s/Sharon L. Ovington
Sharon L. Ovington
United States Magistrate Judge

NOTICE REGARDING OBJECTIONS

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to the proposed findings and recommendations within ten days after being served with this Report and Recommendations. Pursuant to Fed. R. Civ. P. 6(e), this period is extended to thirteen days (excluding intervening Saturdays, Sundays, and legal holidays) because this Report is being served by mail. Such objections shall specify the portions of the Report objected to and shall be accompanied by a memorandum of law in support of the objections. If the Report and Recommendations are based in whole or in part upon matters occurring of record at an oral hearing, the objecting party shall promptly arrange for the transcription of the record, or such portions of it as all parties may agree upon or the Magistrate Judge deems sufficient, unless the assigned District Judge otherwise directs. A party may respond to another party's objections within ten days after being served with a copy thereof.

Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F. 2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140 (1985).